

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: HEBERT CONSTRUCTION CO., INC.; Plymouth County, Iowa.	ADMINISTRATIVE CONSENT ORDER NO. 2007-SW- 10 NO. 2007-AQ- 18
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TO: George Hebert
Hebert Construction Co., Inc.
1712 S. Saint Aubin St.
Sioux City, IA 51106

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Hebert Construction Co., Inc. (Hebert Construction) and the Iowa Department of Natural Resources (Department) in order to resolve solid waste disposal and open burning violations by Hebert Construction. Pursuant to this Order, Hebert Construction shall pay an administrative penalty in the amount of \$1,500.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Jennifer Christian
IDNR Field Office #3
1900 N. Grand
Spencer, IA 51301
Ph: 712-262-4177

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality) and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Admin. Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Hebert Construction is a general construction company that engages in demolition contracting and the disposal of construction and demolition (C & D) wastes arising from demolition activities.

2. On September 26, 2006, the Department received a complaint alleging the illegal disposal of C & D wastes in a ravine on a property owned by Charlotte Hebert. On that date, the Department investigated the complaint and spoke with Charlotte Hebert. Ms. Hebert indicated that her son, George Hebert, owner of Hebert Construction, operates a construction company and hauls clean rubble to her property to fill a ravine on the site. The ravine was inspected and found to contain only clean fill materials.

3. On November 14, 2006, the Department received a complaint alleging that C & D waste, including insulation, wood, pipe, and shingles, was being dumped in a ravine in Plymouth County.

4. On November 16, 2006, the Department investigated the complaint. The location was determined to be the property of Charlotte Hebert, the same location as inspected by the Department on September 26, 2006. Illegal open dumping and open burning of a large volume of C & D waste was observed on this date. Photographs were taken. The dumping and burning were being conducted by Hebert Construction. An employee of Hebert Construction was interviewed and stated that he had been directed by George Hebert to burn the combustible waste. A Notice of Violation was issued on November 16, 2006.

5. On November 22, 2006, Hebert Construction submitted landfill receipts verifying the removal and proper disposal of approximately 20 tons of C & D wastes removed from the property of Charlotte Hebert.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC Chapters 100-121.

2. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.

3. Iowa Code section 455B.133 provides that the Commission shall establish rules

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governing the quality of air and emission standards. The Commission has adopted 567 IAC Chapters 20-30 relating to air quality.

4. Rule 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The materials burned in this case do not qualify for exemption or variance. The above facts disclose violation of this provision.

V. ORDER

The Department orders and Hebert Construction agrees to pay an administrative penalty in the amount of \$1,500 at the time of execution of this Order.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Hebert Construction has achieved an economic benefit from its illegal conduct. Costs avoided include disposal fees, labor, and hauling costs. The open burning of solid waste has resulted in cost avoidance. The burning of solid waste typically reduces the volume of the waste by greater than 50%. The cost savings realized in this case was reduced due to the subsequent removal and proper disposal of the remaining waste. Therefore, \$250 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The illegal open dumping of solid waste threatens the groundwater of the state. Open burning of solid waste releases toxic air emissions and can produce run-off that pollutes the surface and ground water of the state. Such open burning may violate ambient air standards. Based on the above considerations, \$1,000 is assessed for this

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factor.

c. Culpability. Hebert Construction is engaged in demolition contracting. The generation of C & D wastes is a routine part of the operation of this business. Hebert Construction has a duty to be aware of the applicable prohibitions against open burning of solid waste. It appears that the violations documented herein are an isolated occurrence and that generally only clean rubble has been deposited by Hebert Construction. Based upon these factors and the subsequent cooperation of Hebert Construction \$250 is assessed for this factor.

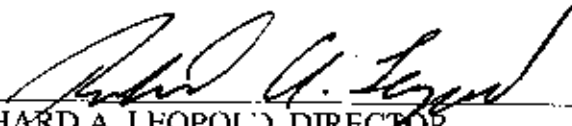
VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Hebert Construction. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

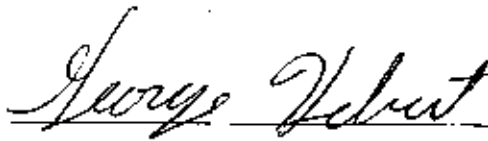
Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

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RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4 day of
Sept., 2007



HEBERT CONSTRUCTION CO., INC

Dated this 23 day of
July, 2007

Field Office #3; Jon Tack; VII, C...

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